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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,050	10/21/2003	Christopher J. Nagel	2751.2001-US4	3487
38473 7590 01/16/2007 ELMORE PATENT LAW GROUP, PC 209 MAIN STREET N. CHELMSFORD, MA 01863			EXAMINER KOPEC, MARK T	
			ART UNIT	PAPER NUMBER
			1751	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/16/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/690,050

Applicant(s)

NAGEL, CHRISTOPHER J.

Examiner

Mark Kopec

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,6,7 and 9-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 6, 7, 9-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

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This action is responsive to applicant's amendment/remarks filed 10/30/06. Claims 1, 3, 6, 7, 9-13 are currently pending.

The 1.132 Declaration filed 06/02/06 is entered.

The Terminal Disclaimer filed 06/02/06 is entered. The double-patenting rejections over U.S. 6,572,792 and 6,921,497 are withdrawn.

Claims 1, 3, 6, 7, 9-13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of copending Application No. 10/659,090. This rejection is maintained for the reasons set forth in the Rejection mailed 11/29/05.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1, 3, 6, 7, 9-13 are rejected under 35 U.S.C. 101 because the disclosed invention is inoperative and therefore lacks utility.

Claims 1, 3, 6, 7, 9-13 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

These rejections are maintained for the reasons set forth in the Rejection mailed 11/29/05.

The 1.132 Declaration of Dr. Nagel has been carefully reviewed. The declaration presents independent testing/confirmation of the claimed copper materials.

The examiner has carefully reviewed the submitted data table (GDSS, XRF-UWO, PIXE and GDOES testing performed by various independent companies).

The examiner agrees that the data appears to disclose independent results verifying the claimed characteristics. However, it is noted that several claims (14-33) are not limited to the copper material disclosed in the 1.132 Declaration. Additionally, the examiner respectfully submits that applicant's statement (in the 1.132 Declaration) "I am attaching an Excel spreadsheet of the data obtained from the following third party companies of the manufactured copper ingot (14-00-01) presented in the application" is insufficient for a complete determination to be made regarding the experimental procedures relied upon in the declaration. Specifically, it is unclear if the tested sample (14-00-01) is an ingot disclosed in the specification example(s), or if such was made according to the disclosed process. Applicant should **detail the procedure** utilized to produce sample 14-00-01. Additionally, applicant should provide

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a detailed description of the various testing relied upon in the 1.132 Declaration (GDSS, XRF-UWO, PIXE and GDOES testing performed by various independent companies). The 1.132 Declaration does not contain sufficient data relating to the testing procedures utilized by the "third parties" to make a complete determination of the results.

Applicant is invited to contact the examiner in order to discuss possible ways of overcoming the above rejection.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark

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Kopec whose telephone number is (571) 272-1319. The examiner can normally be reached on Monday - Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Mark Kopec
Primary Examiner
Art Unit 1751

MK

January 8, 2007